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IN THE
Supreme Court of the United States

OCTOBER TERM, 1942.

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No. 706.
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QUALITY AND SERVICE LAUNDRY, INC., *Petitioner,*

v.

NATIONAL LABOR RELATIONS BOARD.

—
On Petition for a Writ of Certiorari to the United States
Circuit Court of Appeals for the Fourth Circuit.

—
**PETITIONER'S BRIEF IN REPLY TO BRIEF FOR THE
NATIONAL LABOR RELATIONS BOARD IN
OPPOSITION.**
—

WALTER L. GREEN,
LOUIS A. SPIESS,
Counsel for Petitioner.



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In the Board's brief in opposition to the petition for the writ, it contends that the question presented to the Court is:

"Whether that portion of the Board's order, sustained by the Court below, which requires petitioner to offer reinstatement to striking employees, who under color of legal right, collected and retained money claimed by petitioner, is valid and proper."

Petitioner contends that this is not the question presented to this Court, but on the contrary, asserts that the question presented is:

"Whether striking employees are entitled to reinstatement, if while on strike they collect money belonging to the employer, fail and refuse to turn it over to the employer, and convert it to their own use."

The testimony in this case is indisputable that eight of the striking drivers of the petitioner, while on strike, collected money belonging to petitioner (their employer) and converted said money to their own use.

The record in this case is also indisputable that the employer never knew that any of said eight employees were collecting the company's money until its then working employees called upon the company's customers and were informed that the company's employees who were then on strike, had called upon said customers and in many instances had collected the company's money.

Upon the company ascertaining that its money had been so collected by its striking employees, it wrote a letter to each of said employees approximately twenty days after the strike, demanding of each of said eight striking employees the return to the company of the monies so collected.

The record shows, and it is undisputed, that said striking employees, after receiving said letter of demand, went to the attorney for the Union, and acting upon his advice refused to comply with the company's demand to return said money so unlawfully collected and converted. (Record 72.)

The Board in its brief in opposition to the issuance of the writ, contends that said striking employees had collected and retained said monies because of their apprehension that the company would hold them financially responsible for the credit said striking employees had extended their customers while working for the company. The testimony in this case fails to disclose a single instance where the employer ever attempted to place any forfeiture upon these striking employees' bonds or wages due them at the time they went on strike, notwithstanding this proceeding was instituted by the National Labor Relations Board against this company approximately four months after said employees had wrongfully collected and retained the company's money.

The brief for the National Labor Relations Board contends, (on page 7 thereof, footnote 6), that the collection and retention of said money by said striking employees was under the cover of an "agent's lien".

The very wording of this contention, is inconsistent with the statement in said footnote, wherein it is stated:

"Unless he undertakes duties inconsistent with such a right or otherwise agrees that it is not to exist:

"(a) An agent has a right to retain possession of money, goods, or documents of the principal, of which he has gained possession in the proper execution of his agency, until he is paid the amount due him from the principal as compensation for services performed or as indemnity for money advanced or liability incurred by him in connection with such things."

This contention in the Board's brief is inconsistent with the testimony of Long (Record 197) that these drivers had an agreement which reads as follows:

"The employee agrees at the time he delivers to the customers for the company any goods or articles on which it has rendered any of its services he will collect all sums due by said customers for said service and on the same day turn over to the company all sums so collected."

On page 200 of the Record, Long further testified:

"Q. Nor offered to make a settlement? A. No, I have not.

"Q. Although it has been requested of you? A. Yes sir.

"Q. Your counsel told you it was requested of him, did he not, I am referring to John Keane. A. Yes, he told me it was requested of him and they had a conference on the subject.

"Q. Did you ever give him the money with which to pay this? A. No, I did not.

"Q. You realize that that money belongs to the company, do you not? A. Yes, I realize it belongs to them."

The Board's brief attempts to give color of legality to the action of these striking drivers in collecting the company's

money and converting it to their own use by citing, at the bottom of page 4 of said brief, that one of the striking drivers named Randolph, after receiving a letter from Berger requesting an accounting, abandoned the strike and returned to work.

The fact that the company permitted any of the striking drivers to return to its employ notwithstanding the wrongful collection and conversion of its funds by said reinstated employees, does not in any manner create any legal rights in the striking employees who wrongfully collected and converted to their own use the company's money and refused at all times to return same on demand. This is clearly set forth by this Court in the case of *National Labor Relations Board v. Fansteel Metallurgical Corporation*, 306 U. S. 240, wherein the Court said, in part:

"The important point is that respondent stood absolved by the conduct of those engaged in the "sit-down" from any duty to re-employ them, but respondent was nevertheless free to consider the exigencies of its business and to offer re-employment if it chose. In so doing it was simply exercising its normal right to select its employees."

CONCLUSION.

From the foregoing it is believed that this Court will hold that this is a question not of "general importance" but of great importance for all employees who are placed in positions of trust in their employment, to the end that funds collected by them for said employers will not be converted to the use of said employees, and that this Court will hold that the decision of the Court below was incorrect and in conflict with the cases cited in the company's petition for writ of certiorari, and that the same will be granted.

Respectfully submitted,

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